

TAB

INTERAGENCY CLASSIFICATION REVIEW COMMITTEE
WASHINGTON, D.C. 20408

MINUTES OF THE NOVEMBER 7, 1973
MEETING OF THE INTERAGENCY CLASSIFICATION
REVIEW COMMITTEE

Participants:

James E. O'Neill, Acting Chairman
William L. Brown, ICRC
David O. Cooke, Defense
Robert G. Dixon, Justice
Charles Marshall, AEC
Marvin Smith, NSC Staff
Mark Spiegel, State
John Warner, CIA

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Attending:

[redacted]
Joseph J. Liebling, Defense
Adrienne Thomas, Archives

Proceedings:

Announcements:

1. Dr. O'Neill announced that Dr. Rhoads had been unable to attend today's meeting because he had been called to testify at Congressional appropriations hearings.
2. Mr. Brown came on board full time as Executive Director of the ICRC in mid-October.
3. Mr. Louis Kruh has filed suit under the Freedom of Information Act against the General Services Administration, and the Departments of State and Defense for release of the Truman memorandum creating NSA. Mr. Kruh had previously appealed to the ICRC for release of the document, but the Committee had denied his appeal.
4. The Departments of Labor and Transportation have become signatories to the Memorandum of Agreement on reproduction of classified documents for purposes of declassification review.

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5. The Ad Hoc Working Group studying the problem of foreign classified documents has scheduled its next working session for November 13.

6. The ICRC brochure "Know Your Rights to Mandatory Review of Classified Documents" should be ready to send to the printer in the next few weeks. It is anticipated that the brochure may be ready for distribution to the Agencies in late December. The initial order will be for 15,000 copies.

Minutes of the Previous Meeting

Mr. Smith suggested that the last line of the first paragraph on the last page should be changed to read "the NSC Staff representative abstained." Mr. Smith emphasized that there is a specific distinction between the NSC Staff and the Council itself.

Mr. Dixon said that the last paragraph of page 3 should be changed to read "Mr. Marvin stated that Mr. Dixon's opinion was that the act of classification is personal and nondelegable; therefore, the determination of whether a particular document should be classified is required to be made by an individual with classification authority."

Mr. Cooke indicated that the second paragraph on page 4 needed clarification. The DOD survey of classification guides used within the Department or by its contractors was to be limited to studying the number of categories of material being exempted by classification guides and the number of guides which provided for exemption from the GDS. Therefore, the second sentence of that paragraph should be as follows: "He also suggested that DOD undertake a statistical survey to determine how many guides issued within DOD provide for exemption from the GDS either in whole or in part, and the number of categories of information which is exemptable by application of classification guides."

The Minutes of the October 3 ICRC meeting were then approved as amended.

Stueck and LaFeber Appeals

The only appeals pending before the ICRC are from William Stueck and Walter LaFeber for NSC/68 and related Korean and Chinese documents.

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Amend OK.

In January 1973 the ICRC voted to recommend declassification (with minor deletions) to the NSC. There has been no decision on the original recommendation. Mr. Brown and Mr. Smith had come to a tentative agreement on a letter to be sent to Mr. Stueck and Professor LaFeber explaining the current situation. From the NSC Staff's viewpoint, the primary problem has been the timing of the documents' release.

Dr. O'Neill doubted whether this response would satisfy Professor LaFeber who is a well-known historian and on the advisory board for the State Department's Foreign Relations series.

Mr. Smith indicated that substantively the documents could be declassified and that the NSC Staff is anxious to release them. However, timing their release is an important factor.

He stated that the Foreign Relations volumes for 1948 and 1949 are progressing well and will result in the release of most of the Korean documents within several years.

Dr. O'Neill stated that Professor LaFeber represents a common viewpoint among scholars that the Foreign Relations series is not the best way to proceed to release documents. There is a widespread belief that documents are deliberately kept closed to allow the State Department the right to first publication.

Mr. Smith said it is the feeling among NSC Staff that releasing documents to individuals enhances the publicity given to release of documents.

Mr. Marshall stated that if the timing of the release of the documents was the root of the problem then the requesters should have been informed that the documents cannot be declassified. The long delay in informing the requesters should have been avoided.

Mr. Dixon made the point that timing of release and substance of the documents are inseparable. The ICRC has to consider both elements when making a decision on an appeal. Timing was the subtle issue underlying the Committee's consideration of the 1952 memorandum establishing NSA.

Mr. Spiegel replied that timing of release had been considered by the ICRC when the Committee voted on the case in January. At that time the NSC could have rejected the ICRC's recommendation and the requesters would have had a definitive answer.

It was the consensus of the members that the requesters should have been informed in January that the documents could not be declassified. It was evident from the discussions that the membership believed that a formal decision on the appeals should be made.

Data Index

Mr. Brown proposed that the ICRC request the agencies to submit a progress report on implementation of the data index. The Committee has a responsibility to be informed about the program's implementation and to ensure compliance with the requirement for the index. The reports can also be used as partial input to another Committee progress report to the President.

Mr. Cooke said that DOD had studied implementation of the data index within the Defense Department and had determined that the cost of \$30 to \$50 million a year was prohibitive. Therefore, DOD has not implemented a data index. It was DOD's view that it had met the literal requirements of E.O. 11652 by "undertaking" the establishment of a data index system even though the prohibitive cost has not allowed it to implement same.

Mr. Dixon inquired whether the cost would be prohibitive if Defense were to index only those documents currently being created.

Mr. Cooke replied that the cost would still be prohibitive.

Mr. Dixon stated that the Committee could find itself in an embarrassing situation the next time an ICRC representative is called to testify before Congress if the data index, for which far-reaching promises were made, has not been implemented.

The Committee members agreed that a status report on the data index would be worthwhile.

Quarterly Reports

Mr. Brown summarized agency responses to the quarterly reports. Specifically, he felt that the Report of Classification Abuses (SF 322) was being under-utilized since few agencies are reporting classification abuses. In order to determine the reliability of the statistics the ICRC is receiving

from the agencies, Mr. Brown proposed that the Committee ask that they submit a report on their inspection programs which were established pursuant to the ICRC's February 27, 1973, Letter of Instructions Re: Quarterly Reports to the ICRC.

Mr. Marshall agreed that the figures appear suspect. However, he suggested Mr. Brown perhaps should address individual inquiries only to those agencies which are reporting very few classification abuses. Mr. Brown pointed out that most agencies report few if any abuses. It was the general consensus of the Committee that a report on each agency's inspections would be in order. In connection with the subject, Mr. Cooke stated that the ICRC might want to consider appointing a special committee to study the adequacy and value of the quarterly statistical reports. He believes that agency inspection programs are a more valuable management tool than the statistical reports.

Quarterly Summary Report

Mr. Brown stated that he felt it is necessary for the ICRC to know what sort of sampling system agencies are using to report figures on their quarterly summary report if they do not use an actual count of documents. The statistics are valuable only if the sampling is done scientifically to produce a reliable extrapolated count. It was the general consensus of the Committee that Mr. Brown should request copies of sampling programs from those agencies using such programs in lieu of actual counts.

Procedures for Handling Complaints and Suggestions

Mr. Brown expressed the belief that in addition to the procedures for handling appeals cases, the ICRC should adopt formal procedures for dealing with suggestions and complaints which come to the Committee pursuant to Sec. VII (A) (2) of E.O. 11652 and Sec. IX. D. of the NSC Directive.

Mr. Spiegel said that although he expected the ICRC would receive more complaints as the Committee becomes better known, the details of an individual case should dictate how a suggestion or complaint will be handled.

Mr. Cooke felt that the Departmental Review Committees could channel complaints to the ICRC as they do for appeals.

Most members agreed that complaints and suggestions could be handled on a case by case basis. The question will be studied further if it seems warranted.

Special Sub-committees

Mr. Brown explained that in his discussions with the members, some had indicated a desire that the ICRC members should not become involved with minute details at its monthly meetings but should operate as a policy and decision making body. To carry out this recommendation, Mr. Brown suggested that the ICRC may want to consider appointing a standing sub-committee to do detailed studies and make recommendations to the Committee.

Mr. Warner stated that the ICRC should continue its current practice of appointing ad hoc committees as the need arises.

Mr. Smith endorsed this approach. He further explained that the composition of a sub-committee might vary with the subject to be studied. He suggested that the Committee authorize the function of a specific sub-committee.

Mr. Cooke said the Executive Director should ask the ICRC members to assign a representative to a sub-committee as they were needed and then report at the next ICRC meeting what action was taken. It was thus the general consensus of the members that no standing subcommittee be appointed.

Dr. O'Neill asked if there were any other issues to be discussed.

Mr. Spiegel proposed that the ICRC establish a sub-committee to study the various proposed amendments to the Freedom of Information Act to determine whether we could live with any of the proposals and to be prepared with a unified opinion if asked to comment on the amendments.

Mr. Dixon suggested that it might be appropriate to establish liaison between the ICRC and the group being established within the Justice Department to study the effectiveness of the Freedom of Information Act. He will investigate the possibility.

Mr. Cooke pointed out that OMB is assigned the responsibility for presenting the Executive branch's opinion on all pending legislation on that issue.

There being no further business, the meeting was adjourned.